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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 43

MORRISON T. WADE and BESSIE LOU WADE,
Petitioners,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent

PETITION FOR REHEARING FROM THE DISMISSAL OF THE APPEAL OF MORRISON T. WADE AND BESSIE LOU WADE

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Petitioners Morrison T. Wade and Bessie Lou Wade pray that this Court grant a rehearing from its Order of October 10, 1955, dismissing petitioners' appeal, and that the appeal be granted and/or a Writ of Certiorari issue to review the judgment of the Recorder's Court of the City

of Detroit, State of Michigan, in the above entitled cause, as prayed for in the appeal filed by petitioners on December 28, 1954.

Petitioners show that while this petition is in the form of a petition for rehearing, in fact it may be considered as a petition for Writ of Certiorari.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

1. Petitioners show that the only question presented in the appeal and Jurisdictional Statement previously filed in this Court and cause, was the constitutionality of the One-Man-Judge-Grand Jury created by a statute of the State of Michigan (Section 28.943-4, Michigan Statutes Annotated).

Petitioners state that there has been no decision upon the merits of the issues presented below at any stage of the proceedings.

2. Petitioners show that they have been deprived of their liberty without due process of law and have been denied the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, by reason of the following:

False Swearing of Juror on Voir Dire

A. Petitioners and appellants filed an affirmative defense in the Recorder's Court of the City of Detroit charging the then Superintendent of the Detroit Police Department with threatening the petitioners.

Therefore, at the time of the trial, when the jury was being selected, petitioners asked to have the question put to prospective jurors on the *voir dire* as to their acquain-

tanceship and/or friendship wtih police officers of the metropolitan Police Department of the City of Detroit. (Every juror who answered in the affirmative was excused.) On the *voir dire,* juror Eshelman stated under oath that she was not acquainted with any member of the metropolitan police department of the City of Detroit. After the trial, it was ascertained that for fifteen years juror Eshelman had been and was a next-door neighbor and close friend of a police officer who was an attache of the Recorder's Court of the City of Detroit during sessions of the One-Man Grand Jury proceedings being conducted by the Honorable Gerald W. Groat, which had returned the process of arrest against petitioners. (See affidavit of Kathleen S. Frede, marked Exhibit 1 attached hereto.)

In the case of *Clark v. U. S.,* 289 U. S. 1; 77 L. Ed. 993, which was a case involving criminal contempt proceedings against a juror biased on the defendant's behalf, Mr. Justice Cardozo said that there was an "*overmastering need, so vital in our polity, of preserving trial by jury in its purity against the inroads of corruption.*" (Italics ours.) This Court and others are not unmindful of the greater and more fundamental necessity that an accused has a right to jury trial free of pre-existing juror bias against him. The Michigan Supreme Court, in the case of *People v. DeHaven,* reported in 321 Mich. 327, supports the principle referred to in *Clark v. U. S., supra* (pp. 331, 332):

> "In *39 Am. Jur.,* pp. 65, 66, §45, under the subject of 'New Trial' we find the following:
>
> " 'It seems generally agreed that when matters which might establish prejudice or work a disqualification of a juror are actually gone into upon the *voir dire* examination and false answers are given or deception is otherwise practiced, as the result of which a juror, although disqualified in fact, is accepted, the party misled or deceived thereby, upon

discovering the fact of the juror's incompetency or disqualification after trial, may assert that fact as ground for and obtain a new trial, upon a proper showing of such facts, even though, it has been held, the bias or prejudice is not shown to have caused an unjust verdict; *it is sufficient that a party, through no fault of his own, has been deprived of his constitutional statutory guaranty of a trial of his case before a fair and impartial jury.*'" (Italics ours.)

Petitioners also learned for the first time that juror Eshelman during the trial had been telling the other jurors from time to time that she knew petitioners were guilty and that she knew much more about the case than was being presented.

Improper Selection of Jury

B. Unknown to the defendants, the names of the jurors comprising the jury panel of the Recorder's Court of the City of Detroit were divided alphabetically in three boxes. The jurors called to sit in the case against petitioners were taken from the box containing names of jurors beginning A to H. Petitioners were deprived of the right to have a jury picked from the entire jury panel. By reason of this arrangement, the possibility of juror Eshelman being picked as a juror was increased by 300%.

The selection of jurors from less than the entire panel has been condemned in the case of *Hewitt v. Circuit Judge*, 71 Mich. 287, wherein Chief Justice Sherwood stated that "the selection of the jury, secured to litigants by our Constitution, is of first importance to parties, and they have a right to such jury."

Jury Tampering

C. During the early part of the trial in the Recorder's Court, at least two of the jurors brought to the attention of the trial court the fact that they had been visited by two members of the metropolitan Police Department of the City of Detroit. This tampering with the jury was protested by petitioners and their counsel. The trial court promised to make an investigation, provided petitioners and their counsel would keep the matter secret and waive a mistrial. (See affidavit of Larry S. Davidow, marked Exhibit 2 attached hereto and made a part hereof.) Acting upon this judicial assurance, petitioners waived a mistrial, but it later developed that no investigation was made. Petitioners were thus lulled into a false sense of security by the trial court itself and did not obtain the mistrial to which they were entitled.

Illegal Imposition of Burden of Proof

D. Petitioners show that before the trial, they attempted to have returned to the Society of Good Neighbors the books and records of the Society of Good Neighbors, which also contained the personal files and records of petitioners; that these books and records had been seized by the One-Man-Judge-Grand Jury in February, 1948, and were in his possession or under his control from that time until the present date. Petitioners were unable to properly prepare for the trial and make a proper showing in their defense by reason of the fact that they had no access to the books and records and their own personal files except for short periods of time during the course of the trial, and then, only under the supervision of the police. *Denial of access to the books and records made it impossible for defendants to go forward with the evidence required to meet the shifting theories of criminal liability upon which the*

prosecution was permitted by the trial court to conduct its case.

While petitioners were charged in four counts with conspiracy to cheat and defraud and with gross cheat and fraud, based upon claimed misrepresentations on their part to the effect that the Society of Good Neighbors was a charity, which representations the prosecution claimed were false, the prosecution was permitted to proceed and conduct the trial upon the theory of embezzlement. That the Trial Court accepted this theory of embezzlement is indicated by the following statement made by the Court in denying petitioners' Motion for Directed Verdict made during the course of the trial:

> "Every dollar in cash, every article of merchandise with respect to this organization or the defendants' relation to this organization was acquired from donations with the possible exception of Bingo Games, receipts which might be placed in another category than just donations, but essentially the entire income, whether in cash or merchandise, that was at the disposal of defendant Morrison T. Wade as Managing Director and the one in charge of the Society's activities, came from donations. *That placed the defendants, both of them, being directors of the Society and being apparently the sole controlling authority in the Society, in a position of stewardship with respect to that which was received from the people of Detroit, as a result of the representations made to the people of Detroit concerning the activities of the Society.*" (Italics ours.)

The chief witness for the People, an auditor, admitted that the so-called $750,000 fraud which was charged against the defendants was arrived at by totaling the entire income of the Society of Good Neighbors for the five year period previous to the issuance of the process in June, 1948, without any regard whatsoever for expenses paid out in the conduct of the business of the corporation.

Proceeding on an embezzlement theory, although charging a conspiracy to cheat and defraud and gross cheat and fraud, in which no so-called co-conspirators were ever charged or indicted, the trial court permitted the prosecution throughout the trial to attack additionally the corporate existence of the Society of Good Neighbors collaterally under the claim that it was not a charitable organization, despite the fact that such attack could not be made in a collateral proceeding such as a criminal case. In and of itself this procedure resulted in most unfavorable publicity to the petitioners and denied petitioners a fair trial.

It is hardly necessary to remark on the fundamental unfairness that existed in permitting the state to control a defendant's right of access to those books and records upon which he relies for his defense. Petitioners' position does not materially differ in this respect from that of the children of Israel who were directed to make bricks by a Pharaoh who withheld from them the straw required to do so.

Public Judicial Expression of Guilt

E. Upon the hearing of the motion for directed verdict on behalf of defendants at the close of the People's case, the trial court, in denying the motion, said:

> "All right, the motion is denied. That is, the motion for a directed verdict of not guilty for the following reasons: No. 1. This is directed to Roman Numeral I of the said motion. The Court finds there is proof in the case at bar of a wrongful act on the part of the defendants from which the jury can find the defendants guilty under each of the four counts"
> • • •

Counsel for defendants sought to direct the Court's attention to the fact that newspaper people were making

notations of what was said, which would result in adverse publicity to the defendants and which would undoubtedly be conveyed to the jury. Subsequent newspaper articles appeared in the Detroit newspapers, quoting the trial judge as saying:

> "The court finds there is proof of wrongful acts on the part of the defendants from which the jury can find the defendants guilty of conspiracy" • • •

As appears by the affidavit of Lucile Clark, marked Exhibit 3 hereto attached and made a part hereof, slipping from various newspapers appeared in the jury room from time to time.

In *People v. Bigge,* 297 Mich. 58, the Supreme Court of the State of Michigan condemned the practice of judicial comment on evidence (despite the existence of a statute giving the court authority to make comments upon the evidence) by saying (p. 72):

> "The right of trial by jury is too firmly established in American jurisprudence to allow it to be whittled away by the legislature or by a too liberal construction of statute law by the courts. Once the door is open for allowing the opinion of the court to be impressed upon jurors that one charged with crime is guilty of the offense, the fundamental right of trial by jury is impaired."

The same statute received a similar narrow construction in the case of *People v. Padgett,* 306 Mich. 545:

> "The statute, within proper limits, has a proper place in the criminal procedure of our courts. It must not be given the effect of depriving one charged with crime of the presumption of innocence, nor throw upon him the burden of proof. It is the sole province of the jury to determine the credibility of witnesses, and to pass upon questions of fact. *If even one juror is swayed by the weight of the openly*

expressed opinion of the court, and his verdict thus affected, the right of trial by jury in criminal cases is impaired." (Italics ours.)

Procedural Due Process Denial

F. Before the case came on to be tried, three motions were filed by petitioners: (1) Motion to Quash the Information; (2) Motion for Bill of Particulars, and (3) Motion for Change of Venue.

The record shows that Motion for Change of Venue and the Motion for Bill of Particulars were never heard or passed upon. The then presiding judge in a brief written memorandum denied the Motion to Quash. He immediately thereafter left the City of Detroit to go to Florida, where he has remained ever since. Petitioners sought to have their Motion for Bill of Particulars and Motion for Change of Venue heard. Thereafter, a letter was received from the Judge then residing in Florida, in which he stated that it was his intention to have denied all three motions. This informal letter from Florida was accepted by the Trial Court in complete disregard of the formalities inherent in any judicial proceeding, namely, that courts act only through formal orders. Petitioners were denied even a hearing upon their motion for Bill of Particulars and Motion for Change of Venue, let alone the relief that they were entitled to thereunder.

3. Petitioners further show that although the Legislature of the State of Michigan expressed its policy in Act No. 53 of the Public Acts of the State of Michigan for 1954, which requires the issuance of a Writ of Error as a matter of course in all criminal cases involving the personal liberty of a defendant (which Act did not become effective until August 13, 1954, whereas petitioners' Application for Leave to Appeal had been filed in June, 1954),

the Supreme Court of the State of Michigan summarily rejected petitioners' Application for Leave to Appeal.

4. Petitioners further state that they present this petition to this Court in good faith and not for any purpose of delay, and that they believe that unless a rehearing is granted it will result in a gross miscarriage of justice and that your petitioners will have been deprived of their liberty without due process of law and will have been denied the equal protection of the laws, in violation of the Constitution of the United States.

CONCLUSION

For the reasons hereinabove set forth and in the appeal heretofore filed, it is respectfully urged that a rehearing be granted and that upon such rehearing, a writ of certiorari issue to the Recorder's Court of the City of Detroit, Michigan.

Respectfully submitted,

DAVIDOW & DAVIDOW,
By LARRY S. DAVIDOW,
Attorneys for Petitioners.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to grounds specified in Rule 33 of the Rules of this Court.

LARRY S. DAVIDOW.

EXHIBIT 1

AFFIDAVIT OF KATHLEEN S. FREDE

State of Michigan,
County of Wayne—ss.

Kathleen S. Frede, being duly sworn, says that she lives at 15433 Bentler Avenue in the City of Detroit; that she is the daughter of James E. Dunn, who, for a number of years prior to his retirement in July 1950 was a police officer in the Police Department of the City of Detroit; that up to the time of her marriage on the seventh of July, 1950, she lived with her parents and during the period between 1938 and the time of her marriage lived in the family home at 14015 Whitcomb Avenue in said City of Detroit; that the house to the south, adjacent to said premises was during said period occupied by Willis D. Eschelman and Isobell Eschelman, his wife, and one or more of their daughters; that during the period referred to said Willis W. Eschelman and said Isobel Eschelman called at her home on a number of occasions and deponent's father and mother called at their home on a number of occasions; that a friendly and neighborly relationship existed between their two families for the greater part of the period referred to; that deponent's mother and said Isobel Eschelman frequently visited with each other at their retaining wall between the two homes and said Willis W. Eschelman and deponent's father James E. Dunn, frequently carried on neighborly conversations there with each other during said period; that said Isobel Eschelman called on deponent's mother when she was confined to her house by illness, and showed her many neighborly courtesies; that deponent's father during a year and a half during said

period drove a Police Department Sound Car and parked it in his garage at night; that during said period herein first mentioned, her father wore a blue police uniform and did so on a number of occasions in the presence of said Isobel Eschelman.

Kathleen S. Frede.

Subscribed and sworn to before me this 12th day of January, 1952.

Edmund M. Sloman,
Notary Public, Wayne County, Michigan.
My commission expires August 12, 1952.

EXHIBIT 2

STATE OF MICHIGAN—In the Recorder's Court for the City of Detroit

The People of the State of Michigan, v. Morrison T. Wade and Bessie Lou Tanner Wade, Defendants.	No. A-51843

AFFIDAVIT OF LARRY S. DAVIDOW

State of Michigan,
County of Wayne—ss.

Larry S. Davidow, being duly sworn, deposes and says that he is a member of the law-firm of Davidow & Davidow, attorneys of record for the defendants in the above entitled cause, and that he makes this affidavit in support of the

motion for new trial on behalf of the defendants in the above entitled cause.

Deponent further says that at the time the jury was being impaneled, to wit, January 26, 1951, deponent was furnished a number of jury lists by the Clerk of the Court, one of which was a printed sheet and several were typewritten in form; that by the manner of the calling of the jury, deponent was led to believe that all of the names appearing on all the lists were contained in the jury box then on the Clerk's desk; that not until after the trial had been concluded with the verdict of the jury, did this deponent or anyone connected with the defense, discover or learn that (1) the jury had been divided into three parts and the names of the jury kept in three separate boxes separated alphabetically; (2) that while the courtroom had been filled with prospective jurors on January 26, 1951, numbering more than one hundred fifty, the names called for jury service were called from only one box, covering a list that had a total of only about fifty names; (3) that Box 1 from which were drawn the names of the jurors selected for the above case had not been used for other jury service from January 23, 1951, but was withheld for the purpose of use in "the long case," meaning the Wade case.

Deponent further says that since conclusion of the trial and the verdict of the jury, and for the first time, deponent and others of the defense, have learned that in this jury box Number 1, there were the names not only of those who had been called for service January 2 and January 8 and January 22, but also names of those who were not to be called until February 5, and that all of the names in Box 1 were limited alphabetically to the names beginning with "A" running through "H" inclusively, comprising about

one-third of the entire jury panel; that had this deponent or defendants known of all these irregularities, they would have challenged the array of jurors for cause.

Deponent further says that as he is informed and believes it to be true and charges the fact to be, that the practice in the Recorder's Court for the City of Detroit so far as examining jurors on the voir dire is concerned, is that the lawyers themselves interrogate prospective jurors; that the trial court disregarded this practice of the Recorder's Court and insisted upon examining the jurors himself; that this deponent asked for the opportunity of examining the prospective jurors, which request was denied.

Deponent further says that during the course of the examination, this deponent asked the Court to put the question to the prospective jurors whether any of them was familiar or acquainted with any members of the metropolitan police department of the City of Detroit, and that the Court put the question only in part, as a result of which no proper interrogation was made to discover possible prejudicial attitudes on the part of jurors, with the result that the defendants did not receive a fair trial.

Deponent further says that he is certain that if he had been permitted to interrogate the prospective jurors, he would have discovered that juror Isabel Eschelman not only knew a police officer, but that the said police officer was one James E. Dunn, Jr., a next door neighbor for more than twelve years, and that she was well familiar with him.

Deponent further says that he is certain that if he had been permitted to interrogate the prospective jurors he would have discovered that juror Isabel Eschelman not only knew Walter Kutch, a witness for the People, but that the husband of Isabel Eschelman was then selling real estate in the northwest area of Detroit and that the said

husband of said Isabel Eschelman not only knew Walter Kutch but that he had twice tried to get a job from Walter Kutch in 1950 and on both occasions had been turned down by the said Walter Kutch.

Deponent further says that had the foregoing facts been disclosed, this deponent on behalf of the defendants would have challenged juror Eschelman either for cause or peremptorily.

Deponent further says that as appears by the records of the Police Department and the records of the City Directory, one James E. Dunn, Jr., lived at 14015 Whitcomb Avenue in the City of Detroit and had lived at that address for a number of years up to and including September, 1951; that Isabel Eschelman, one of the jurors in the case, resides at 14007 Whitcomb Avenue in the City of Detroit, next door to the said James E. Dunn, Jr.; that the records of the Police Department show that the said James E. Dunn, Jr. was attached to Judge Gordon's Court in the Recorder's Court in the City of Detroit for several years and was there during all the time that the grand jury proceedings involved in this case were going on and for some time thereafter, and that said James E. Dunn, Jr. was attached to Judge Arthur Gordon's court during the time this deponent had argued the motion to dismiss on behalf of the defendants.

Deponent further says that a few days after the jury had been impaneled in the above entitled cause, and when some testimony had already been heard, all counsel in the case were invited into the private office of the Honorable James R. Breakey, Jr., Circuit Judge sitting in the Recorder's Court, presiding in the above entitled cause; that the Court advised all counsel that a report had been brought to him by a member of the jury concerning the

complaint of a juror that a policeman had called upon her at her home questioning her on matters that had to do with her as a juror in this cause; that the following day or soon thereafter, another juror reported a like experience.

Deponent further says that upon the second occurrence the Court invited the defendants in his private chambers concerning this tampering with the jury by members of the metropolitan police department, and offered to declare a mistrial of the case, although at the same time the Court indicated his desire to proceed with the trial of the case; that the Court at that time and during the various conversations, gave positive assurance that he would make a complete and thorough inquiry into the behavior of the members of the metropolitan police department of the City of Detroit relating to this tampering with the jury; that the defendants declined the offer of a mistrial upon the positive assurance of the Court that a thorough investigation would be made by him and the results made known as soon as possible.

Deponent further says that he urged upon the Court that the inquiry be pursued quickly and fully, and particularly that time was the essence of the inquiry because, as this deponent stated his opinion, the lapse of time would dull the recollection of necessary and pertinent witnesses as to what had occurred, and make it difficult, if not impossible, to ascertain the origin, as well as the author, of this effort to tamper with the jury; that the Court definitely said that such inquiry would be made by him; that the Court enjoined upon all those present the obligation of secrecy in order to prevent unfavorable publicity surrounding the matter.

Deponent further says that counsel for defendants and the defendants themselves scrupulously observed the re-

quest of the Court as to secrecy, particularly because of the Court's absolute promise to make such a full and complete investigation.

Deponent further says that at different times during the course of the trial he inquired of the Court what progress was being made in such inquiry, and that the Court would put him off with vague generalities; that this deponent reminded the Court that the passage of time was working adversely to such inquiry, but the Court did nothing further about it, insofar as this deponent was informed or has ever been informed.

Deponent further says that at no time has the Court, either in chambers or in open Court, made any report of any alleged inquiry and this deponent is led to believe by virtue of the circumstances of the episode that no inquiry or investigation has ever been made by the Court.

Deponent further says that if the defendants or their counsel could have anticipated that no investigation was going to be made, the defendants and their counsel would either have accepted the offer of the Court for a mistrial, or would have formally made a motion for mistrial because of jury tampering.

Deponent further says that it is his opinion that if any such investigation as promised by the Court had been made, the disclosures that have been discovered since the verdict of the jury, concerning what undoubtedly was perjury by one of the jurors concerning her knowledge or acquaintanceship with a police officer and knowledge of the case, in which that particular juror had a pronounced and decided opinion against the defendants, would have been brought out.

Deponent further says that on August 14, 1951, when the Court passed upon a motion made by defendants' counsel on behalf of defendants for a directed verdict of not guilty,

the Court employed language by which he stated a fixed opinion that at that time while the trial was still in progress, there was enough testimony to support a finding of guilt on each of the four counts against both defendants.

Deponent further says that while up to August 14, 1951, the newspaper men had been present very rarely for weeks during the actual course of the trial, usually coming in at the end of the day or at the beginning of the day, on this particular occasion when the Court made the aforesaid statement, representatives of all the Detroit daily newspapers were present taking down the language herein described and which was then complained of by this deponent; that this deponent directly challenged the Court's attention to the impropriety of and the prejudicial effect of the employment of such language by the Court, especially that the words he was then employing would appear the following day in the newspapers, and definitely called the Court's attention to the fact that the jurors were all reading the newspapers and that the probabilities were exceedingly strong that these prejudicial words so complained of would appear in the newspapers and would be read by members of the jury.

Deponent further says that the following day, August 15, 1951, the apprehensions voiced by this deponent as to the newspapers carrying the prejudicial comments of the Court were realized; that articles appeared in all the Detroit daily newspapers, and particularly in the Detroit Free Press and the Detroit News; that as a matter of fact, an adverse article appeared in the Detroit News in the late afternoon of August 14, and another article in the Detroit News in the morning of August 15; that this deponent did at the opening of Court on the morning of August 15, before the jury was called in, direct the Court's attention to the prejudicial language employed by the

Court on the previous day and that it had been quoted with its prejudicial effects in the Detroit Free Press on the morning of August 15 on the first page of the second section; that a copy of this article is hereto attached and made a part hereof, and reference is made to the newspaper itself.

Deponent further says that copies of the articles that appeared in the Detroit News are also attached hereto and made a part of this affidavit.

Deponent further says that he asked the Court Reporter, Burton E. Hahn, to write up the transcript of the incident of August 14, 1951, as well as the incident of August 15, 1951, above described, when this deponent called the Court's attention to what had occurred in the newspaper article; that the transcript for August 14 first furnished this deponent by the Court Reporter, while it contained the prejudicial language of the Court complained of, was absolutely silent on the objections entered by counsel for defendants concerning the language so employed and the fact that it would appear in the newspapers because the newspapermen were then present writing everything down and from which it would also follow that the members of the jury would see it; that thereupon deponent again requested the Court Reporter to furnish the transcript containing the full episode of August 14.

Deponent further says that several days later, deponent received another transcript of proceedings of August 14, 1951, containing the language employed by counsel in his objection to the Court's behavior as above described and complained of, and which, in addition, under the guise of August 14, contained language of what must have occurred the following day, to wit, August 15; that thereupon deponent made another request of the Court Reporter to

furnish the transcript of the episode of August 15, when, before the jury was called in, this deponent did challenge the Court's attention to the fact that his fears had been realized in that the Detroit Free Press of that morning had already carried the story, as shown by the attached exhibit.

Deponent further says that no such transcript was ever furnished but what appears to be part of what occurred on the 15th of August has been run into and made a part of the proceeding of August 14th; that this deponent has repeatedly asked the Court Reporter to furnish a transcript of what occurred in the morning of August 15th; and that at first the said Court Reporter advised deponent that he remembered the event having occurred as deponent described it and that he would again try to find it; that as recently as this week, the Court Reporter said that he remembered the episode and that if he could not find the same in his notes, he would give deponent a statement to that effect; that such promise has not been kept, the reporter furnishing deponent a statement to the effect that his notes are silent on the subject.

And further deponent saith not.

/s/ Larry S. Davidow,

Subscribed and sworn to before me this 13th day of December, A. D., 1951.

/s/ Nell M. Yorgen,
Notary Public, Wayne County, Michigan.
My commission expires November 28, 1953.

EXHIBIT 3

State of Michigan,
County of Wayne—ss.

Lucile Clark, being duly sworn, deposes and says that she resides at 3371 West Outer Drive, Detroit, Michigan, and that she was one of the jurors who sat in the trial of the case of The People v. Morrison T. Wade and Bessie Lou Tanner Wade in the Recorder's Court for the City of Detroit.

Deponent further says that for several days prior to January 26, 1951, the jurors whose names were in Box 1, were not called on any cases in the Recorder's Court and were informed that they were being held for a long case that was about to be called.

Deponent further says that juror Isabel Eschelman was on the panel of jurors whose last day of service would have been January 26, 1951.

Deponent further says that she sat through the said trial until the time the jury retired for deliberation, and that it was her impression that Mrs. Eschelman from the very beginning of the case, had her mind definitely made up as to the defendants' guilt and that she repeatedly made the statement to the jurors, "You don't know the half of it," after testimony had been brought out that was detrimental to the defendants.

Deponent further says that juror Eschelman had lunch almost every day with three other women jurors and almost every day brought lunch down or some gift of food or something, to these other women, as well as to other jurors.

Deponent further says that after the trial of the case had started, juror Eschelman made the statement that her husband was selling real estate in the northwest area of Detroit, although at the time of her examination to serve as a juror, she had stated that her husband was a retired Ford worker, and had said nothing about her husband being in the real estate business.

Deponent further says that toward the end of the trial, by reason of Mrs. Eschelman's questions and attitude against the defendants, this deponent said to Mrs. Eschelman: "Mrs. Eschelman, you had them hung right from the start" and that Mrs. Eschelman said "No" and became very angry at this deponent.

Deponent further says that she first noticed the hostility and antagonism of juror Eschelman toward the defendants when Mr. Kutch was called as a witness for the People.

Deponent further says that after the charge of the Court was given, this deponent was so confused as to the counts and as to what the jury was supposed to do, and as to what the charges against the defendants were, that she was pleased to be excused from the deliberation; and that she knows that several of the other jurors felt the same way about the charge of the Court.

Deponent further says that during the course of the trial she came to the conclusion that it was the duty of the jury to find the defendants guilty; that she can not ascertain where, during the course of the trial, she arrived at such a decision, but that the entire proceeding was such as to make her feel that that was what the jury was there for.

Deponent further says that during the course of the trial from time to time there were newspaper clippings concerning the case being tried, brought into the jury room and passed around among the jurors.

Deponent further says that during the latter portion of the trial, it became her impression, and she arrived at the conclusion, that it was in the rules that the verdict would have to be according to the majority vote of the jury and that the minority would have to abide by the decision of the majority.

And further deponent saith not.

/s/ Lucile Clark.

Subscribed and sworn to before me this 12th day of December, A. D. 1951.

/s/ Nell M. Yorgen,
Notary Public Wayne County, Michigan.
My commission expires November 28, 1953.